

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2978 of 1985

with

SPECIAL CIVIL APPLICATION No 2979 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

MAHENDRA T THANKI

Versus

BIRLASAGAR HIGHER SECONDARY SCHOOL

Appearance:

1. Special Civil Application No. 2978 of 1985
MR JD AJMERA for Petitioner
MR KS NANAVATI for Respondent No. 1
MR VB GHARANIYA AGP for Respondent No. 2
MR MC BHATT for Respondent No. 3
2. Special Civil Application No 2979 of 1985
MR JD AJMERA for Petitioner
MR KS NANAVATI for Respondent No. 1
MR VB GHARANIYA AGP for Respondent No. 2
MR MC BHATT for Respondent No. 3

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 21/03/98

ORAL COMMON JUDGEMENT

Both these petitions are on similar facts and involve identical question of law regarding the validity of the exemption notification granted to the respondent school under Section 52 of the Gujarat Secondary Education Act, 1972 ("the Act" for brief). The said notification dated 17th April, 1979 is annexed with the affidavit-in-reply filed in these petitions. It reads as follows:

" In exercise of the powers conferred by Section 52 of the Gujarat Secondary Education Act, 1972 (Guj. 18 of 1973), the Government of Gujarat hereby exempts the Birla Sagar Higher Secondary School, Porbandar affiliated to the Central Board of Secondary Education, New Delhi from the provisions of Section 31 of the said Act."

2. The provisions of Section 31 of the Act provide registration of a secondary school. Section 31 reads as follows:

"31. (1) No person shall impart secondary education through a school unless such school is registered under the provisions of this Act."

3. The respondent school was thus exempted from registration and provisions of Section 31 of the Act by the notification dated 17.4.1979 issued by the State Government with the result that it is exempted from whole of the Act.

4. The provisions of the Act apply to secondary schools registered under the Act. On the commencement of the Act in 1972 the respondent school was a recognized school and it automatically got registered. As stated in the affidavit-in-reply of the Govt., in paragraph 3 it is stated that the exemption of 1979 is given by the notification of the Government not only for the syllabus and examinations but also from all provisions of the said Act. In paragraph 4 it is stated that the petitioner is not entitled to move the Tribunal under the Act for ventilating his grievances and he can make grievances about his service by filing a civil suit in the appropriate court.

5. The petitioners were employed in 1973 and their services were terminated in 1981 and a dispute was raised before the Secondary Education Tribunal under Section 36 of the Act in Chapter VI, particularly Sections 36 and 38 of the Act. Section 36 provides for procedure for termination of service of staff of a registered private secondary school. Section 38 provides that where there is any dispute between a registered private secondary school and any person in service of such school, the person can make an application to the Tribunal. The petitioners accordingly filed their applications in the Tribunal. However, the Tribunal dismissed their applications on the ground that the Tribunal had no jurisdiction to entertain their application because the respondent school is not a school registered under the Act having been exempted from the requirement of registration under Section 31 of the Act.

6. The validity of that notification is challenged in these petitions as also the validity of the orders of the Tribunal.

7. On behalf of the respondent school, the learned Counsel has relied on the judgment of the Division Bench in the case of RAJ NARAIN BAJPAI v. CENTRAL BOARD OF SECONDARY EDUCATION reported in 1989 (1) Gujarat Law Reporter 367. In that case, direction was sought to restrain the respondents from commencing the Central School, Kendriya Vidyalaya at ONGC Camp and restraining the authorities from registering the said Central School. The Division Bench considered the identity and the constitution of the Kendriya Vidyalaya in paragraph 7 of the judgment where the Central Minister in charge of Education and Culture is the Chairman. The Central School has its own organisational set-up and code of conduct. The Sangathan has also specific Rules regarding admission, examination and promotion and the Sangathan has a scheme of its own regarding studies in Kendriya Vidyalayas. Thus, the Sangathan has a complete Code of its own. The objects and the constitution of the Kendriya Vidyalayas spelt out the independent existence of Kendriya Vidyalaya without being controlled in any manner by the Gujarat Secondary Education Act. It is also observed that it was also evident that the Gujarat Secondary Education Board has no control or say in determining the subjects and syllabus for the Kendriya Vidyalayas. After considering the definition of 'Secondary education', 'Secondary school', 'Recognised school' and the provisions of Sections 31 and 52 of the Act, the Division Bench held as follows in paragraphs 9, 10 and 10A:

"9. Learned Advocate General has emphatically submitted that Kendriya Vidyalayas are not imparting knowledge in the subjects determined by the State Government, but the Kendriya Vidyalayas are imparting knowledge in the subjects determined as per their own Rules and not as per the subjects determined by the State Government from time to time. Learned Advocate General has rightly submitted that it is not the State Government or the Gujarat Secondary Education Board that determines the subjects for Standards 8th, 9th and 10th of the Schools run by Kendriya Vidyalayas. The said definition of 'Secondary education', therefore, cannot apply to Kendriya Vidyalayas under the Sangathan. It follows that the said definition of 'Secondary school' also cannot apply to the Kendriya Vidyalayas. The aforesaid definition of 'recognised school' also is dependent on the definition of a secondary school under the Act and since Kendriya Vidyalayas, in our opinion, are not secondary schools within the meaning of the said Act, the definition of 'recognised school' also cannot apply to them.

10. The aforesaid Sec.31 deals with registration of schools under the Act. Section 31 makes it clear that whoever wants to impart secondary education within the definition of secondary education under the Act through a school has to get such a school registered under the provisions of the Act. Kendriya Vidyalaya Sangathan do not want to impart secondary education as defined under the said Act. It is, therefore, evident that schools such as Kendriya Vidyalayas cannot be said to have been covered under the said Sec.31.

10A. The said Sec.52 is regarding exemptions under the Act. It empowers the State Government to exempt any secondary school as mentioned therein from all or any of the provisions of the Act. It is an enabling section and whoever wants to avail of it, will approach the State Government for such exemption. In the facts and circumstances of the case, it is clear that respondent No.2 has not made any application with a view to claim exemption. Application of Sec.52, therefore, in the present case does not fall for consideration."

8. It is thus clear that the Division Bench in that case was not concerned with the question of exemption as provided under Section 52 of the Act and the Division Bench has specifically stated that it did not fall for their consideration. The Division Bench also stated that Kendriya Vidyalayas are not imparting knowledge in the subjects determined by the State Government. In the present case, there is no dispute that the respondent school is imparting knowledge in the subjects determined by the State Government and it cannot be disputed that exemption has been sought on the basis that they are secondary schools imparting education in the subjects determined by the State Government for such schools and that the school is otherwise fall within the definitions of the Act. Students studying in State Board and Central Board are eligible for transfer from one Board to another. They are teaching the same subjects and recognised to be equivalent everywhere by all authorities.

9. Next question that arises for consideration is the validity of the notification of exemption. Whether there are any reasons and whether they are valid. In the order dated 5th December, 1997 S.K.Keshote, J. has made the following observation:

"The Counsel for the respondent State Government on being asked by the Court unable to give out what was the reason and the grounds which had prevailed with the State Government to exempt the respondent No.1 - Birlasagar High Secondary School from the provisions of Section 31 of the said Act., but he is unable to give out any reply. It is necessary and relevant to know that what was the reason which prevailed with the Government to exempt this institution from the provisions of Section 31 of the Act which results into making the provisions of the said Act non-applicable to the teachers who are no manner the workmen under the Industrial Disputes Act, 1947. Even if this institution is affiliated to the Central Board of Secondary Education at Delhi, still there must be some good and cogent grounds to exempt it from the applicability of the provisions of Section 31 of the Act. But, no reason, whatsoever has been put forward by the respondent State. The learned counsel for the respondent No.2 is unable to give out any justification or made out any case of any

rationality and the reasonableness of the Notification made under Section 52 of the said Act exempting the institution from the provision of Section 31 of the said Act. This court has no option but to direct the Secretary, Education Department, Sachivalaya, Government of Gujarat, Gandhinagar to remain present in the court on 17th December, 1997 along with the copy of the said Notification and the relevant file to make known the court the reasons and grounds which have been prevailed with the Government to exempt the institution from the provision of Section 31 of the said Act."

10. Thereafter an affidavit dated 22.12.1997 is filed by the State Government. In spite of the above order dated 5.12.1997, no specific reason has been given as to the grounds which prevailed with it to exempt the respondent school from the provision of Section 31 of the Act and consequently from all the provisions of the Act. The file also does not show any reason.

11. Provisions of Section 52 show that the Government has discretion to grant or not to grant exemption even to schools affiliated to Central Board of Secondary Education and also as to from which provisions of the Act. In the present case, there is no reason and material whatsoever to show as to why such blanket exemption is granted to the private school so as to leave unprotected the interests of the teaching and non-teaching staff of the school. This is a very important consideration while considering the question of exemption. It is clear that all these considerations were not at all present to the mind of the State Government and its satisfaction is vitiated as the relevant consideration is excluded. A question would also arise when the exemption is considered whether the persons likely to be affected (the existing staff) were given an opportunity of being heard. Principle of natural justice demands grant of opportunity of hearing. That has not been followed in this case. That is an additional reason for striking down the exemption.

12. In view of the above, the result is that the notification of exemption cannot be sustained in law and it requires to be quashed and set aside. Accordingly, the impugned notification of exemption as also the impugned judgments of the Tribunal in both petitions are quashed and set aside. Both the matters are remanded back to the Tribunal for disposal in accordance with law.

13. Rule is made absolute with costs in both the petitions.

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[KMG Thilake]